



STATE OF CALIFORNIA

**STATE BOARD OF EQUALIZATION**

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**January 29, 2009**

**To Interested Parties:**

**Notice of Proposed Regulatory Action  
by the  
State Board of Equalization**

**Proposed to Adopt Regulation 1502, *Computers, Programs, and Data Processing***

**NOTICE IS HEREBY GIVEN**

The State Board of Equalization, pursuant to the authority vested in it by section 15606(a) of the Government Code, proposes to amend Regulation 1502, Computers, Programs, and Data Processing, in Title 18, Division 2, Chapter 4, of the California Code of Regulations, relating to sales and use tax. A public hearing on the proposed regulations will be held in Room 121, 450 N Street, Sacramento, at 9:30 a.m., or as soon thereafter as the matter may be heard, on March 16, 2009. At the hearing, any person interested may present statements or arguments orally or in writing relevant to the proposed regulatory action. The Board will consider written statements or arguments if received by March 16, 2009.

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

Current law, Revenue and Taxation Code section 6010.9, provides that "sale" and "purchase," for sales and use tax purposes, generally do not include the design, development, writing, translation, fabrication, lease, or transfer, for a consideration, of title or possession of a custom computer program. The statute includes definitional sections.

Regulation 1502, Computers, Programs, and Data Processing, is proposed to be amended to interpret, implement, and make specific Revenue and Taxation Code section 6010.9. Amendments are proposed to clarify the statutory definition of "computer program." Specifically, the amendments are necessary to clarify that: (1) the definition of "computer program" includes subdivisions such as routines and similar programming building blocks, as described in Revenue and Taxation Code section 6010.9, subdivision (c); and (2) the definition of "computer

program” contained in subdivision (c) is consistent and in harmony with the definitional and related explanatory provisions pertaining to “customer computer programs” and “existing prewritten programs” set forth in subdivision (d).

#### COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The State Board of Equalization has determined that the proposed amendments and regulations do not impose a mandate on local agencies or school districts. Further, the Board has determined that the amendments and regulations will result in no direct or indirect cost or savings to any State agency, any costs to local agencies or school districts that are required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of Title 2 of the Government Code or other non-discretionary costs or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

#### EFFECT ON BUSINESS

Pursuant to Government Code section 11346.5(a)(8), the Board of Equalization made an initial determination that the adoption of the amendments to Regulation 1502 will have no significant statewide adverse economic impact directly affecting business.

The adoption of the proposed amendment to this regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

The amendment to the regulation as proposed will not be detrimental to California businesses in competing with businesses in other states.

The proposed regulations may affect small business.

#### COST IMPACT ON PRIVATE PERSON OR BUSINESSES

That Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

#### SIGNIFICANT EFFECT ON HOUSING COSTS

No significant effect.

#### FEDERAL REGULATIONS

Regulation 1502 and the proposed changes have no comparable federal regulations.

## AUTHORITY

Section 7051, Revenue and Taxation Code.

## REFERENCE

Section 6010.9 Revenue and Taxation Code.

## CONTACT

Questions regarding the substance of the proposed regulation should be directed to Ms. Leila Hellmuth (916) 322-5271, at 450 N Street, Sacramento, CA 95814, e-mail [Leila.Hellmuth@boe.ca.gov](mailto:Leila.Hellmuth@boe.ca.gov) or MIC:50, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0050.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, telephone (916) 445-2130, fax (916) 324-3984, e-mail [Richard.Bennion@boe.ca.gov](mailto:Richard.Bennion@boe.ca.gov) or by mail at State Board of Equalization, Attn: Rick Bennion MIC:81, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0080.

## ALTERNATIVES CONSIDERED

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which this action is proposed, or be as effective and less burdensome to affected private persons than the proposed action.

## AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared an initial statement of reasons and an underscored version (express terms) of the proposed regulation. Both of these documents and all information on which the proposal is based are available to the public upon request. The Rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed regulation are available on the Internet at the Board's web site <http://www.boe.ca.gov>.

## AVAILABILITY OF FINAL STATEMENT OF REASONS

The final statement of reasons will be made available on the Internet at the Board's web site following its public hearing of the proposed regulation. It is also available for your inspection at 450 N Street, Sacramento, California.

## ADDITIONAL COMMENTS

Following the hearing, the State Board of Equalization may in accordance with law adopt the proposed regulation if the text remains substantially the same as described in the text originally made available to the public. If the State Board of Equalization makes modifications which are substantially related to the originally proposed text, the Board will make the modified text, with the changes clearly indicated, available to the public for fifteen days before adoption of the regulation. The text of any modified regulation will be mailed to those interested parties who commented on the proposed regulatory action orally or in writing or who asked to be informed of such changes. The modified regulation will be available to the public from Mr. Bennion. The State Board of Equalization will consider written comments on the modified regulation for fifteen days after the date on which the modified regulation is made available to the public.

Sincerely,

Diane G. Olson, Chief  
Board Proceedings Division

DGO:reb

Enclosures